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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/872,914	06/01/2001	Ferdinand Schermel		4663

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Ferdinand Schermel  
RR# 10  
Brampton, ON L6V 3N2  
CANADA

EXAMINER

CASTELLANO, STEPHEN J

ART UNIT	PAPER NUMBER
3727	9

DATE MAILED: 06/12/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

JL

<b>Office Action Summary</b>	Application No.	Applicant(s)	
	09/872,914	SCHERMEL, FERDINAND	
	Examiner	Art Unit	
	Stephen J. Castellano	3727	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

1) Responsive to communication(s) filed on \_\_\_\_\_ .

2a) This action is FINAL.      2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

4) Claim(s) 1-21 is/are pending in the application.

    4a) Of the above claim(s) 2 and 10-21 is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 1 and 3-9 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.  
    If approved, corrected drawings are required in reply to this Office action.

12) The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
    a) All b) Some \* c) None of:  
        1. Certified copies of the priority documents have been received.  
        2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_ .  
        3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
    \* See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
    a) The translation of the foreign language provisional application has been received.

15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

1) <input type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ .
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ .	6) <input type="checkbox"/> Other: _____ .

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Claims 2 and 10-21 have been withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in Paper No. 4.

Applicant's election with traverse of Group 1 claims 1-10 in Paper No. 4 is acknowledged. The traversal is on the ground(s) that handles and hitch are not used. This is not found persuasive because the examiner said nothing with respect to the use or non-use of handles or hitches. The examiner stated that the containers are not secured. This is true when evaluating claim 1 as originally submitted which states in part b that at least one attachable container is provided. No positive claimed securement is required between the wheeled container and the attachable container in claim 1. Therefore, the restriction requirement is deemed proper since no error has occurred.

The requirement is still deemed proper and is therefore made FINAL.

This application contains claims 11-21 drawn to an invention nonelected with traverse in Paper No. 4. A complete reply to the final rejection must include cancelation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 3-9 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 3 is indefinite because the scope of claim 3 is unclear. The phrase "means for connecting said wheeled container secured to said attached container, to second said wheeled

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container secured to second said attached container" could be repetitious of the "means for securing ..." recited in claim 1. It can't be determined if an error was made in repeating the very same structure or if an additional means for securing is being claimed. It can't be determined what applicant intends to secure, the very same said wheeled container and at least one said attachable container, another wheeled container, another attachable container.

Applicant should be aware that the word "said" when it precedes a element must be interpreted as referring to a previously described element. When new elements are introduced, they must be preceded with an article such as, "a" or "an" and must not be preceded by "said." The "second said wheeled container" and "second said attached container" phrases are confusing because it can not be determined if a new element is being introduced or if the original wheeled container is being referred to. When a claim includes two similar elements, such as two wheeled containers, applicant should be careful when referring to either one of the elements. For example, referring to "said wheeled container" wouldn't adequately distinguish between either of the two wheeled container. Use of words such as one, another, first, second, third, etc. are helpful in distinguishing between elements. Use of intended use words such as wheeled, attached, refuse, recycle and stacked can be used to distinguish between elements. Use of alternate words such as container, receptacle, canister, bin, can, box, etc. can be helpful in distinguishing between similar elements.

Claim 3 recites the limitation "said attached container" in lines 2 and 3. There is insufficient antecedent basis for this limitation in the claim. The previous reference is to an "attachable" container.

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Claim 4 recites the limitation "said wheeled container" in line 1. There is insufficient antecedent basis for this limitation in the claim.

Claim 4 recites the limitation "said attached container" in line 1. There is insufficient antecedent basis for this limitation in the claim.

Claim 5 recites the limitation "said attached container" in line 1. There is insufficient antecedent basis for this limitation in the claim.

Claim 6 recites the limitation "said wheeled container" in line 1. There is insufficient antecedent basis for this limitation in the claim.

Claim 6 recites the limitation "said attached container" in lines 1 and 2. There is insufficient antecedent basis for this limitation in the claim.

Claim 7 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite in that it fails to point out what is included or excluded by the claim language. This claim is an omnibus type claim.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 1 is rejected under 35 U.S.C. 102(b) as being clearly anticipated by Evans.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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Claims 1, 3, 4, 8, 9 rejected under 35 U.S.C. 103(a) as being unpatentable over Tolbert, Jr. (Tolbert).

Tolbert discloses a modular wheeled container system that is tilted from the free standing position for rolling comprising a wheeled first container (10) having wheels (17), at least one attachable second container (10) and means for securing adjoining the containers (loop 20 and catch 24). A third container (10) is shown in phantom indicating that it as well can be connected in the same manner as the second container is connected to the first container. Tolbert discloses the invention except for the fourth container. It would have been obvious to include a fourth container and connect it to the third container in the same fashion as the second container is connected to the first container as a duplication of structure that exists within Tolbert. The third and fourth containers being equivalent to the second wheeled container and second attached container, respectively, of claims 3 and 8.

Claims 5 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tolbert in view of Evans.

Tolbert discloses the invention except for the stacking of an attached container on top of the wheeled refuse container. Evans teaches two containers 1 stacked on top of a wheeled container (cart 28) and a strap 31 as an over center clasp. It would have been obvious to add another container to one of the wheeled containers of Tolbert to provide further storage space for a third type of recyclable or refuse item in order to accommodate further variety within a convenient system of containers that are attached to each other and can be moved in unison.

Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Tolbert in view of Evans as applied to claim 6 above, and further in view of Ferbrache.

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The combination of Tolbert and Evans discloses the invention except for the handle of Ferbrache. Ferbrache teaches a latching handle. It would have been obvious to replace the side handle of Tolbert with Ferbrache's latching handle in order to incorporate a lid latch with no additional hardware and allow for secure lid locking so that refuse or recyclables do not inadvertently spill from the containers during transport.

Applicant's arguments with respect to claims 1 and 3-9 have been considered but are moot in view of the new ground(s) of rejection.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen J. Castellano whose telephone number is 703-308-1035. The examiner can normally be reached on M-Th 6:30-5.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee W. Young can be reached on 703-308-2572. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9302 for regular communications and 703-872-9303 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1148.

*S. Castellano*  
Stephen J. Castellano  
Primary Examiner  
Art Unit 3727

sjc  
June 11, 2002